UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 33

GIOK DJIEN GO
PFAHLGRABENSTR 45
IDSTEIN D-655-10 DE GERMANY
AIR-MAIL

COPY MAILED

OCT 0 2 2002

OFFICE OF PETITIONS

In re Application of
Ling Giok Djien go
Application No. 08/860,182
Filed: June 22, 1997
Title: VEHICLE DOOR FOR CAR AND TRUCK

: DECISION DISMISSING
: PETITION

This is a decision on the renewed petition under 37 CFR 1.137(a), filed April 15, 2002, to revive the above-identified application.

For the reasons set forth below, the petition under 37 CFR 1.137(a) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled, "Renewed Petition under 37 CFR 1.137(a)."

Background:

The above-identified application became abandoned for failure to timely file a proper response to the non final Office action mailed April 10, 2000, which set a shortened statutory period of three (3) months for reply. Applicant did not file a proper response. A proper response would have been an amendment to the Office action, a request for reconsideration of the Office action, a continuing application, or a Notice of Appeal. Instead, applicant filed an "Objection to the Interference by Mr. Jason Morrow and Mr. D. Glenn Dayoan", on June 2, 2000, which was treated as a petition under 37 CFR 1.181 to invoke the supervisory authority of the Commissioner. The filing of this petition did not stay the period for applicant to file a proper response to the April 10, 2000 Office action. Accordingly, with a three month extension of time under 37 CFR 1.136(a), applicant had until October 10, 2000 to file a proper response to the April 10, 2000 Office action. No proper response with an extension of time having been received, the above-identified application became abandoned on July 11, 2000. A decision in response to the June 2, 2000 petition was mailed on July 26, 2001. The decision determined that no arbitrary or capricious action on the part of the Examiner had taken place. A Notice of Abandonment was mailed

on August 1, 2001. Applicant filed a petition to revive under 37 CFR 1.137(a) on September 10, 2001. However, this petition was dismissed in a decision mailed on February 19, 2002.

Relevant Patent Laws, Rules and Regulations:

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee required by 37 CFR 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) as required pursuant to 37 CFR 1.137(d). Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[1]

A petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable."[2]

Moreover, delay resulting from the lack of knowledge or improper application of the patent statutes, rules of practice or the Manual of Patent Examining Procedure, however, does not constitute "unavoidable" delay.[3]

---

[1] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

[2] Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

[3] See Haines, 673 F. Supp. at 317, 5 U.S.P.Q. 2d at 1132; Vincent v. Mossinghoff, 230 U.S.P.Q. 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 U.S.P.Q. 1091 (D.D.C. 1981); Potter v. Dann, 201 U.S.P.Q. 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

Analysis:

Applicant has not met his burden of establishing that the entire period of delay, from July 11, 2000 to the filing of the instant petition on April 15, 2002 was unavoidable.

On renewed petition, applicant has presented no evidence as to why **he** failed to timely file a **proper** response to the April 10, 2000 Office action. Rather, as in his June 2, 2000 "Objection to the Interference by Mr. Jason Morrow and Mr. D. Glenn Dayoan", applicant has solely argued that the Examiner failed to "properly, prudently, and diligently" prosecute the application.

Again, a proper response to the April 10, 2000 Office action would have been an amendment to the Office action, a request for reconsideration of the Office action, a continuing application, or a Notice of Appeal. Applicant instead chose to file the "Objection to the Interference by Mr. Jason Morrow and Mr. D. Glenn Dayoan". If in fact applicant wanted to appeal the decision of the Examiner to the Board of Patent Appeals and Interferences, the proper avenue for such action would have been the timely filing of a Notice of Appeal under 37 CFR 1.191, with the appropriate fee.[4]

Conclusion:

While the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. **If applicant desires to revive the above-identified application, applicant is strongly encouraged to revive the application by way of a petition under 37 CFR 1.137(b)**. A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 CFR 1.17(m);[5] (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

Further correspondence with respect to this matter should be addressed as follows:

---

[4] An applicant whose claims have been twice rejected (as in the instant application) may request review of the examiner's decision by the Board of Patent Appeals and Interferences by filing a Notice of Appeal (and fee) in accordance with 37 CFR 1.191. Thereafter, an applicant has two months from the filing of a Notice of Appeal to file an Appeal Brief (with fee) in triplicate in accordance with 37 CFR 1.192.

[5] The fee for a petition under 37 CFR 1.137(b) is currently $640. However, this fee may change in the near future. Applicant can receive up to date fees via the USPTO website at www.uspto.gov.

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6916
Attn: Office of Petitions
Cliff Congo

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA

Telephone inquiries specific to this decision may be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

for D Wood

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy